

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Inter-carrier)	CC Docket No. 01-92
Compensation Regime)	

To: The Commission

**REPLY COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS
REGULATORY COMMISSION (NNTRC) TO COMMENTS FILED BY SMITH
BAGLEY, INC. AND THE NATIONAL TRIBAL TELECOMMUNICATIONS
ASSOCIATION (NTTA)**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419) respectfully submits these Reply Comments in the above-referenced proceedings in response to several recent *ex parte* presentations made by Smith Bagley, Inc. (“SBI”) and the National Tribal Telecommunications Association (“NTTA”). Both entities seek revisions of the current Universal Service Fund (“USF”) mechanisms to provide additional assistance to carriers serving Tribal lands. In support of these Reply Comments, NNTRC submits:

I. BACKGROUND

As the largest native nation in the United States (in terms of reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states

(Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia. Were it a state, the Navajo Nation would rank 4th smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.¹

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”² The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. Its purpose is to service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council and the Navajo Telecommunications Regulatory Act.³

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

¹ Compare http://en.wikipedia.org/wiki/List_of_U.S._states_by_area (states ranked by geographic area) with http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density (states ranked by population density).

² 21 N.N.C. § 503 (V).

³ Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

II. DISCUSSION

A. The Need for Additional Support to Overcome the Digital Divide in Indian Country is Well-Documented

The notion that delivering telecommunications and broadband services to Indian Country is more costly and more difficult than delivering comparable services to urban areas is nothing new. Comments in these proceedings by the National Congress of American Indians (“NCAI”), Gila River Telecommunications, Inc. (“GRTI”), National Tribal Telecommunications Association (“NTTA”), and others all highlight the decades of FCC recognition of the Digital Divide for Indian Country that can be summarized as follows:

- 2000: “Since the passage of the Telecommunications Act of 1996, the Federal Communications Commission has made particular efforts to ensure that all Americans, in all regions of the United States, have the opportunity to access telecommunications and information services. Notwithstanding such efforts to promote ubiquitous service, the Commission has recognized that certain communities, particularly Indian reservations and Tribal lands, remain underserved, with some areas having no service at all.”⁴
- 2010: The *National Broadband Plan* noted the challenges of bring telecommunications and broadband services to Indian Country because of “high build-out costs” and “limited financial resources that deter investment by commercial providers.”⁵
- 2011: *Native Nations Notice of Inquiry*: “Native Nations face unique problems in acquiring communications services, particularly broadband high-speed Internet service. Substantial barriers to telecommunications deployment are prevalent throughout Tribal lands. Those barriers include rural, remote, rugged terrain and areas that are not connected to a road system that increase the cost of installing infrastructure, limited financial resources to pay for telecommunications services that deter investment by commercial providers, a shortage of technically trained Native Nation members to plan and implement improvements, and difficulty in obtaining rights-of-way to deploy infrastructure across some Tribal lands. It is thus not surprising that critical infrastructures rarely have come to Tribal lands without significant federal involvement, investment, and regulatory oversight.”⁶

⁴ *Statement of Policy on Establishing Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd. 4078 para. 1 (2000).

⁵ FCC, *Connecting America: The National Broadband Plan*, at 152 (2010) (*National Broadband Plan*).

⁶ *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, para. 1 (2011) (*Native Nations NOI*).

2011: *2011 USF/ICC Transformation Order*: “[v]arious characteristics of Tribal lands may increase the cost of entry and reduce the profitability of providing service, including: (1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands.”⁷

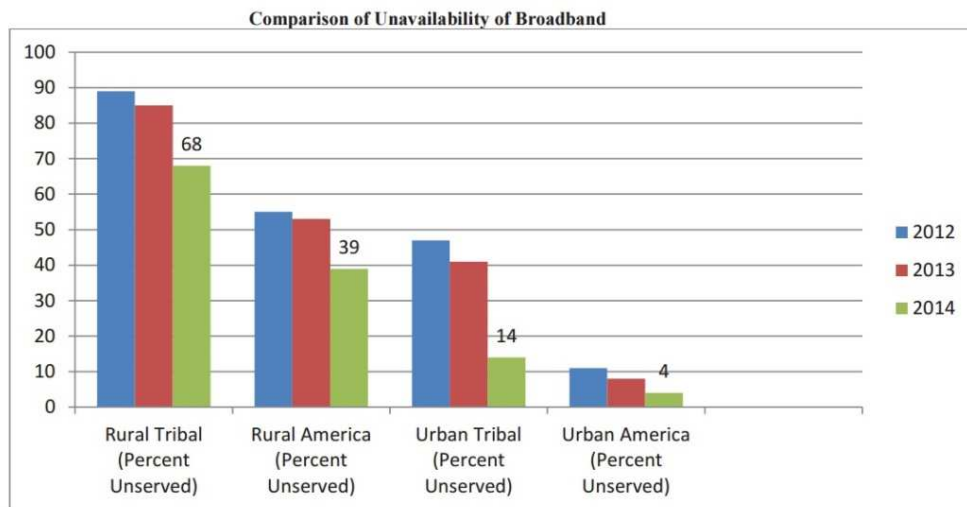
2016: *GAO Report on Challenges to Broadband Deployment on Tribal Lands*: “Access to Internet on tribal lands varies but challenges to access and adoption remain. The high costs of infrastructure buildout on tribal lands, which tend to be remote and rugged terrain, work in tandem with tribal member poverty to create a barrier to high-speed Internet expansion on tribal lands.”⁸

The FCC’s response to its own admissions has been underwhelming. In the five years since the *USF/ICC Transformation Order* was adopted, a mere \$50 million in new money has gone into infrastructure development specifically targeting Indian Country through the Tribal Mobility Fund Phase I reverse auction, and some \$30 million of that went to companies serving Alaska. The result, as graphically illustrated by GTRI, is that Indian Country significantly lags behind the rest of the country (including other rural areas) in both broadband access and adoption.⁹

⁷ *In re Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17820, para. 482 (2011) (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12226, para. 32 (2000)).

⁸ 9 U.S. Gen. Accountability Off., GAO-16-222, *Telecommunications: Additional Coordination and Performance Measurements Needed for High-Speed Internet Access Programs on Tribal Lands* at 1 (Feb. 3, 2016) (GAO Report) at 29.

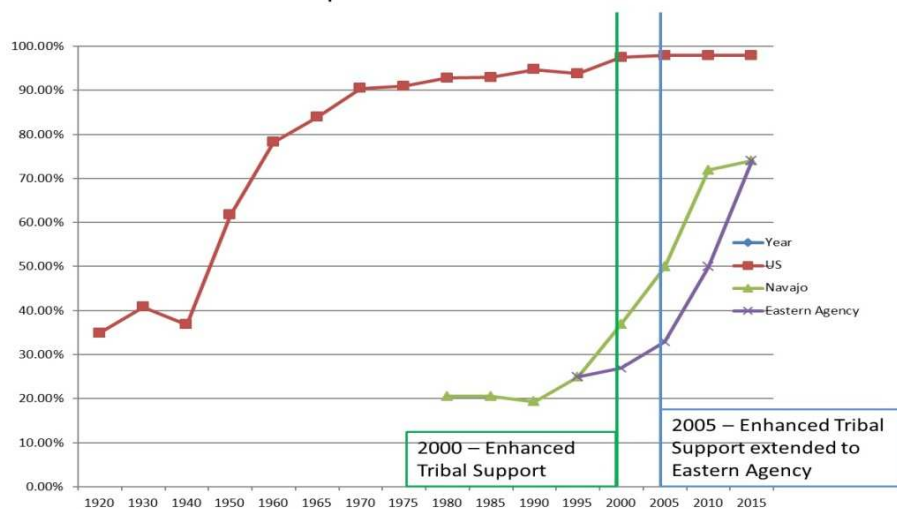
⁹ GTRI Comments, p. 1, citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All et al.*; GC Docket No. 15-19; *2016 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment*, 31 FCC Rcd. 699, 732 para. 80 (2016) (*2016 Broadband Progress Report*).



But what we also know is that if funding is made available and infrastructure is developed, telecommunications and broadband services will be adopted by Native Americans. The story of telephone penetration in the Navajo Eastern Agency (New Mexico), demonstrates this.

Chart I:
Telephone Penetration in U.S. and Navajo Nation by Decade

Comparison of U.S. Telephone Penetration and Navajo Nation Telephone Penetration



This increase in penetration is not due to some sort of awakening on the part of Navajos that telephones are important,¹⁰ but rather is directly tied to Enhanced Tribal Lifeline Support, making telephone service both affordable to individuals, and creating a user base sufficient to support infrastructure investment by carriers to bring service to previously unserved areas of the Navajo Nation.

B. The High Capital and Operational Costs of Operating in Indian Country Are Well Established

In addition to the comments of NTTA and GTRI, the comments of Sacred Wind provide strong evidence that carriers serving Indian Country in general, and the Navajo Nation in particular, encounter both capital and operating costs significantly higher than carriers serving other areas, even other rural areas, encounter.¹¹ While the NNTRC cannot verify the expense numbers submitted by Sacred Wind, it can corroborate that doing business on the Navajo Nation can be expensive, especially as it relates to acquiring Rights-of-Way because of the need to coordinate with both the Navajo Nation, the BIA, and in the case of allotted lands, individual allottees.¹² Similar stories are told by NTTA members in its comments.¹³

C. NNTRC Supports Adoption of a “Remote Tribal Areas Plan” Patterned After the “Alaska Plan”

On October 26, 2016, SBI filed *ex parte* comments¹⁴ urging the FCC to adopt a “Remote Tribal Areas Plan” (“RTAP”) based on the “Alaska Plan” adopted earlier this year by the FCC.¹⁵

¹⁰ This stands in stark contrast with a GAO study that erroneously concluded that “household demand for telephone service—even among low-income households—is relatively insensitive to changes in the price of the service and household income.” See “FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,” GAO-15-335, released March, 2015, p. 14.

¹¹ See Comments of Sacred Wind, filed May 12, 2016.

¹² *Id.*, p. 7.

¹³ See Comments of NTTA, pp. 7-11.

¹⁴ *Ex Parte* Comments of SBI, filed October 26, 2016 (“SBI RTAP Comments”).

Under the Remote Tribal Areas Plan, as with the Alaska Plan, mobile carriers would have their support frozen at 2014 levels for 10 years in exchange for carriers submitting deployment plans to be approved by the FCC.¹⁶

NNTRC supports the concept of a RTAP as put forth by SBI with a few key modifications, detailed below.

1. Tribal Governments Must Be Involved in the Process and Approve Deployment Plans

Throughout the ongoing USF reformation process, Native Nations have made clear that change will only bring progress to Indian Country if Tribes are given a full “seat at the table” and have a say in how monies are spent within their borders. A RTAP will only be successful if Tribes participate in the process and have a say in approving deployment plans. SBI’s own *ex parte* comments demonstrate this. NNTRC to date only has access to the public redacted comments filed by SBI on October 26, 2016. These comments contain some 37 redactions which go to the heart of what SBI is proposing to build, and for which it seeks additional support above and beyond what it would receive under the current USF rules. NNTRC submits that it must have access to these materials and consult with FCC staff on a nation-to-nation basis in determining whether SBI’s plan should be approved. A process whereby the very Nation on which a carrier seeks to deploy infrastructure is shut out of the process is doomed to failure, as bureaucrats in Washington, D.C. with no “ground truth” as to the actual situation on the Navajo Nation would be the sole arbiter of whether a carrier’s RTAP plan should be approved or denied. The NNTRC was established under Navajo law to perform this exact function, and therefore

¹⁵ See *Connect America Fund, et al.*, WC Docket No. 10-90, et al., *Report and Order and Further Notice of Proposed Rulemaking*, 31 FCC Rcd 10,139 (2016) (“*Alaska Plan Order*”).

¹⁶ *SBI RTAP Comments*, p. 8.

requests to be an active player in any RTAP roll-out, both in defining service and build-out standards, and in approving carrier plans.

2. A Rural Tribal Area Plan Should Include All Types of Carriers

SBI's RTAP Comments appear to propose only providing funding to mobile carriers.¹⁷

The Alaska Plan, on which SBI would have the FCC base the RTAP upon, however, made additional funding available to both mobile and fixed carriers.¹⁸ NNTRC believes that a mix of both mobile and fixed broadband will provide the best option to the Navajo people, and therefore supports a Rural Tribal Area Plan that is open to all carriers.

3. A Rural Tribal Area Plan Should Incorporate Other Revisions to the USF Mechanisms

GRTI, NTTA and others urge the FCC to provide more flexibility in operation expenses (Opex) limits to reflect the higher cost of doing business in Indian Country by allowing carriers to increase their Opex using a formula that includes a 2.5 standard deviation factor, as well as adopt a Tribal Broadband Factor (TBF) of 25 percent.¹⁹ It is unclear how these proposals would mesh with a Rural Tribal Area Plan. NNTRC continues to support fine-tuning USF support to recognize the unique difficulties and higher costs in serving Indian Country. NNTRC therefore urges the FCC to issue a Further Notice of Proposed Rulemaking to consider all of the issues confronting carriers as they try and move forward to deploy broadband deeper into Indian Country. As NTTA has pointed out,²⁰ all of these proposals, even taken all together, would not impact a large number of carriers and certainly would not "break the bank" of USF funds.

¹⁷ *Id.*

¹⁸ See *Alaska Plan Order*, ¶ 1 ("If each of the Alaska carriers elects this option, we expect this plan to bring broadband to as many as 111,302 fixed locations and 133,788 mobile consumers at the end of this 10-year term").

¹⁹ See, e.g., *ex parte* Comments of NTTA, in WC Docket 10-90, filed September 16, 2016.

²⁰ *Id.*, at 2 (less than 20 carriers would be able to avail themselves of the TBF and other proposed relief).

Nonetheless, these proposals represent the best, and possibly last, way to spur deployment to some of the most remote, underserved, and impoverished areas of the United States. The Universal Service goals of the Communications Act cannot ultimately be achieved unless particular attention is paid to these areas which traditionally have lagged far behind the rest of America. Now is the time to take up a comprehensive solution to this problem and seek the collective wisdom of carriers serving these areas, and Tribal elders, seeking to bring the benefits of 21st Century technology to their Tribes. The NNTRC stands ready to assist the FCC in further this long overdue and noble cause.

III. CONCLUSION

There is still much work to be done to bring true universal service to the Navajo people, including broadband. This can only happen if carriers receive support commensurate with the heightened expenses they encounter in serving Tribal Lands. For these reasons, the NNTRC urges the Commission to issue a Further Notice of Proposed Rulemaking to address the proposals set forth by SBI, NTTA, and others.

Respectfully submitted,

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